

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
CITY OF ALMATY, KAZAKHSTAN, et al., : Docket #1:19-cv-02645-
JGK-KHP
Plaintiffs, :
- against - :
SATER, et al., : New York, New York
August 23, 2022
Defendants. :
----- :

PROCEEDINGS BEFORE
THE HONORABLE KATHARINE H. PARKER,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiffs: BOIES SCHILLER FLEXNER LLP
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: Calling case 19cv2645, City of Almaty, Kazakhstan v. Sater. Beginning with counsel for the plaintiffs, please make your appearance for the record?

MR. CRAIG WENNER: Good morning, Your Honor, Craig Wenner, Erica Sweeting from Boies Schiller Flexner for plaintiffs BTA Bank and City of Almaty.

THE COURT: Good morning.

MS. ERICA SWEETING: Good morning.

THE CLERK: And counsel for defendants, please make your appearance for the record.

MR. JOHN SNYDER: Hello, Your Honor, John Snyder, John H. Snyder PLLC, counsel for Felix Sater, Dan Ridloff, and the other Sater parties.

THE COURT: Okay, good morning still. So I received plaintiff's letter from August 19 setting out various issues. I guess the biggest issue concerns the privilege log related to the Herz production. And I wanted to understand what's going on. Let me first hear actually, Mr. Snyder, from you on this.

MR. SNYDER: Sure. Thank you, Your Honor. Hold on, there we go. At issue are, as I understand it, about 1,500 documents involving Arnie Herz who was a lawyer. We encountered some issues getting the data.

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2 But the bigger issue that we encountered, Your Honor,
3 was Mr. Sater wanted to talk to Mr. Herz about some
4 issues, and Mr. Herz was very, very sick, is very, very
5 sick, as I understand. And so that's what slowed us
6 down.

7 Now, I learned this morning for the first time
8 that a privilege review may have already been done on it
9 --

10 THE COURT: Okay. Yeah, because I --

11 MR. SNYDER: I haven't confirmed that. That's
12 --

13 THE COURT: I thought Moses & Singer or I
14 thought Ms. Levi had at some point done a privilege
15 review. That was why this production was taking so long
16 because these records were subpoenaed a long time ago,
17 and they were supposedly being screened for privilege I
18 think by that firm.

19 MR. SNYDER: So I have to investigate that,
20 Your Honor, because if it's already been done, then, of
21 course, you know, wonderful, but if not, then we have to
22 figure out how to get it done.

23 THE COURT: Are the documents on an electronic
24 review platform?

25 MR. SNYDER: They are on a review platform that

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I think Blank Rome has. I'm working on getting them on to my own platform.

THE COURT: Okay.

MR. SNYDER: But that we had some technical issues on that.

THE COURT: Because the system should be able to produce some kind of log without you having to manually enter a lot of stuff, and you could agree on certain components of metadata to potentially minimize the work in logging the documents.

MR. SNYDER: Right.

THE COURT: So can you - I'd like to get this resolved sooner rather than later because discovery really is supposed to be ending in this case. Can you get - I recognize this is the final weeks of August because the holiday. I'm wondering if you can get this resolved, say, by September 15?

MR. SNYDER: Your Honor, I can commit to use best efforts to do that. There are - I have to get in touch with a number of people, and as you noted, it is the end of August. But I will - how about this? I can certainly commit to giving you, and Mr. Wenner, a good status update by September 15.

THE COURT: Well, I'm going to require a log,

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whether that log is - I'm going to require some kind of log by September 15. That's three weeks, and it gives you 15 days into September, and at least, almost a week and a half after Labor Day to get this done. At the very least you should be able to spit out a computer log. It may not have everything, but it should, you know, and you should be able to get metadata such as to, from, date range, you know, names on the correspondence, re line, that kind of information should be able to just be generated relatively easily.

MR. SNYDER: Of course, assuming that the underlying substantive review's been done.

THE COURT: Well, aren't the only documents that have held back, the ones that have been held back by some privilege? Because a lot of Herz documents have been produced.

MR. SNYDER: Right. Well, so it's, the project, as I understand it, is to look at documents that have been previously withheld as privileged and determine whether we consider them privileged as to us.

THE COURT: Right, but what I'm hearing is that plaintiffs, there was no privilege log ever produced for those documents.

MR. SNYDER: Oh. Oh, oh, oh, oh. Sorry,

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Judge, I totally misunderstood.

THE COURT: Isn't that right, there's no privilege log for those documents?

MR. WENNER: Your Honor, I did not want to interrupt, but I think I can help.

THE COURT: Okay.

MR. WENNER: I'm probably the only person with longevity who's carried this through from the original subpoena. If I could, if I could hand up to the Court just a large 2022 letter from plaintiffs to defendants and third parties. What had had happened during the pandemic, Your Honor, was that the third parties with an interest in these communications --

THE COURT: Right.

MR. WENNER: -- namely, Triadu and Ilyas Khrapunov and entities associated with them, and then Felix Sater and his associates and entities, and we had - those, you can think of them are three groups - Triadu, Khrapunov, and Sater - they had done a privilege review.

THE COURT: Right.

MR. WENNER: And that was with Jill Levi.

THE COURT: Right.

MR. WENNER: And they produced a metadata chart

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of all withheld communications, that is as you described which was the generated data which is a middle ground because Your Honor well knows it does not have all the information that local rules require. For example, the re line might just be re or forward. That might not disclose who the people are or what the subject matter is. There's no way to challenge it.

So we went through that log of I think it was approximate 2,600 documents, that includes attachments, and we wrote a couple of letters, this is our most recent one, specifically challenging line items, documents on it. When we wrote this letter, we then engaged in a meet and confer with Triadu who responded to us, and we then challenged their privilege calls. They went back, they identified on our - we don't know who asserted which privilege, so we challenged a bunch of documents. Triadu identified the ones from their review that they had asserted privilege over. They confirmed whether anyone else had asserted privilege over them, and then they produced to us ones where they compromised, and then they produced additional information for us to evaluate the privilege on those remaining documents.

We never received a response from Mr. Sater's

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counsel or from the Khrapunovs. So we don't know of those documents we challenged were on the log itself which ones Mr. Sater has asserted privilege over.

Now, I think the compromise for the metadata chart worked well for third parties, it minimized their burden. They likely are done except for Mr. Khrapunov because I don't know yet if he's continuing to assert privilege, he hasn't responded, indicating at least that he's not currently asserting privilege over the ones I'm challenging.

THE COURT: Well, what privilege, I mean does he have - are any of these with his lawyers?

MR. WENNER: Well, I would argue, Your Honor, that no, Mr. Khrapunov has no privilege with Arnie Herz. So he did not respond. I expect --

THE COURT: Herz wasn't his lawyer.

MR. WENNER: No, and I may get all the documents I want from Triadu or Mr. Sater. So that's why I haven't yet challenged or brought Mr. Khrapunov back in court.

THE COURT: So on this letter what are ones that you need Mr. Snyder to take a look at?

MR. WENNER: I need him to respond and tell me two things. What are the documents on the metadata

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chart that he has asserted privilege over.

THE COURT: That Sater has.

MR. WENNER: Sater or his clients have asserted
privilege over.

THE COURT: Okay, so --

MR. WENNER: I don't know which party's
asserting privilege. So I need to know on the chart
which entries --

THE COURT: But do you already know on the
chart which ones Triadu was asserting? I mean, in other
words, does the chart need to be updated based on what's
happened with Triadu? Because that will make it easier
for Mr. Snyder.

MR. WENNER: I'm not sure it will, Your Honor,
because Triadu may be asserting privilege or not, that's
independent of whether Mr. Sater believes he can assert
a privilege or not. So even if Triadu is not asserting
privilege, or if they, it's a different question as to
whether Mr. Sater is asserting privilege.

MR. SNYDER: Just a point of clarification,
question. When you say a chart, you're referring to,
there's an Excel spreadsheet?

MR. WENNER: Yes.

MR. SNYDER: Okay.

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THE COURT: Can you provide that spreadsheet to
Mr. Snyder --

MR. WENNER: Yes, he --

THE COURT: -- later today.

MR. WENNER: I will certainly provide it again.

THE COURT: Okay.

MR. SNYDER: Okay, and then so basically
anything on that Excel spreadsheet that we were
asserting privilege as to, we indicate, and if we're not
asserting privilege to it, we indicate that.

MR. WENNER: Right, but then I would ask, and I
think it's appropriate for a party, is that for those
documents that they're asserting privilege over, if the
metadata chart does not provide the information that a
log would, that they just supplement those rows so that
you can determine --

THE COURT: These are the rows that you're
concerned with.

MR. WENNER: Those are the rows that we were
able to challenge based on the metadata chart.

THE COURT: Okay.

MR. WENNER: And then I think it's appropriate
for the party, when Mr. Sater identifies these are the
rows we asserted privilege over, if a row just has no

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2 information on it --

3 THE COURT: So you don't know, you don't even
4 know if it's attorney-client or work product, for
5 example.

6 MR. WENNER: In many instances. And some we
7 can identify who the people are and we know who they
8 are. In some the subject line is sufficiently
9 descriptive. In others it's not.

10 THE COURT: Is there a column that says
11 attorney-client or work product?

12 MR. WENNER: No.

13 THE COURT: Okay. So, Mr. Snyder, you need to
14 provide on the chart whether you're asserting attorney-
15 client or work produce or both or some other privilege
16 as to the items on that log.

17 MR. SNYDER: Right.

18 THE COURT: That is what I want you to do by
19 September 15. Do you have those documents? Those are
20 the ones getting loaded to your --

21 MR. SNYDER: Those are the ones getting loaded,
22 Your Honor. I will do everything I can to do that and
23 that's all I can promise.

24 THE COURT: Fifteen hundred documents?

25 MR. SNYDER: That's my understanding.

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2 MR. WENNER: That may be what Mr. Sater
3 asserted privilege over or that's the emails with their
4 attachments. I've never seen them.

5 THE COURT: Well, you know what - you know
6 what's on the chart.

7 MR. WENNER: The metadata chart to my
8 recollection is approximately 2,600 rows.

9 MR. SNYDER: Okay.

10 MR. WENNER: But that includes - that includes
11 empty attachments. Sometimes an email has meaningless
12 attachments to it that are just data that have no
13 content. Sometimes there are multiple attachment to an
14 email. So when Mr. Snyder says 1,500, I'm not sure how
15 he's counting, but the chart has 2,600 rows.

16 MR. SNYDER: That was the number somebody told
17 me.

18 THE COURT: Okay. Okay. All right, fine, so
19 I'm setting that September 15 date.

20 Now, also I guess there's an issue with Mr.
21 Sater's responses to interrogatories and production of
22 audio recordings. What's happening with that?

23 MR. WENNER: Our position's very simple, Your
24 Honor. The interrogatory responses we got, every single
25 one says Mr. Sater's preparing a supplemental production

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2 and we'll supplement his responses. That's all we've
3 been asking for. If his response to the interrogatories
4 is complete, that's fine, that's his answer, but every
5 single response says he's preparing more productions,
6 more documents, and will supplement his answers.

7 THE COURT: And what about the audio
8 recordings?

9 MR. WENNER: The audio recordings Mr. Snyder
10 said in an email that he'd be personally visiting the
11 storage locker and would be reporting back on its
12 contents. Mr. Sater has been deposed on them, so we
13 want to test his testimony. The only evidence we've had
14 about the content of them is what Mr. Sater has
15 described.

16 THE COURT: Well, okay.

17 MR. WENNER: And so based on Mr. Snyder's offer
18 to view them himself, we've been following up with him
19 on that offer.

20 THE COURT: Where is the storage locker?

21 MR. WENNER: He has several. Presently it's in
22 --

23 THE COURT: In New York?

24 MR. WENNER: The New York area --

25 MR. SNYDER: Somewhere way out in Brooklyn.

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1 THE COURT: Okay, but in New York.

2 MR. SNYDER: But it is in New York.

3 THE COURT: Okay, fine. So I'm going to give
4 you until September 30 to do the supplemental responses
5 because I want you to get the privilege issue done
6 first. Or say that there's no supplement.

7 MR. SNYDER: Now, Your Honor, part of what
8 we're waiting on to do the supplement is to depose Kenes
9 Rakishev as well as the 30(b)(6) for BTA Bank. Also we
10 have some outstanding interrogatories and document
11 demands that we think will bear upon our responses.

12 THE COURT: Okay, when were those served?

13 MR. SNYDER: March I think.

14 THE COURT: Well, why hasn't plaintiff
15 responded to them?

16 MR. SNYDER: Go ahead, Craig.

17 MR. WENNER: We have served responses and
18 objections, and for I want to say the vast majority of
19 what Mr. Sater's asked for it's documents that have
20 already been produced. We have narrowed our disputed
21 outstanding issues with Mr. Sater's counsel to a
22 handful, and we have gone back and forth on objections
23 narrowing the issues that we think either we should not
24 be compelled to provide or he believes that we should.

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2 To give an example, those interrogatories and
3 RFP's were issued at the time he had his pending motion
4 to amend the complaint, and included in the disclosure
5 requests was information relating to his counterclaims.
6 That information is no longer relevant.

7 At the boundaries Mr. Snyder and I disagree
8 about a couple of topics for the 30(b)(6) witnesses and
9 a couple of requests for disclosures. And we had - Mr.
10 Snyder had responded to us in I believe May narrowing
11 the topics that were in dispute, and we responded to
12 that, and he has not followed up with us on that issue.

13 We will produce our witnesses, and they'll be
14 deposed on numerous topics. The question is whether we
15 move for a protective order on a couple of topics, a
16 handful of topics that are in dispute. And we've sent
17 Mr. Snyder our position on these remaining topics, and
18 we were speaking earlier, Mr. Snyder's going to respond,
19 we'll meet and confer likely next week and be able to
20 identify then whether plaintiffs will move for a
21 protective order on a couple of topics or whether we
22 will just allow the deposition to proceed.

23 And then similarly on the RFP's and
24 interrogatories, there's a couple of issues at the
25 margin where Mr. Snyder after a meet and confer will

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decide whether to move to compel or whether we'll
compromise on those.

THE COURT: Well, look, I want these
depositions conducted either the week of September 19 or
26 because you need to bring discovery to a close.

MR. WENNER: Understood, Your Honor, and we
will coordinate with our clients. These are going to be
- I have to determine whether the witnesses will be, and
discuss with Mr. Snyder, whether they'll be flying here
to New York or whether they'll be remote.

THE COURT: I mean remote is easier to
schedule.

MR. WENNER: We may want them present just to
prepare with them in person beforehand. Because they're
30(b)(6) depositions, so it's a little bit more involved
to --

THE COURT: That's up to you.

MR. WENNER: Okay. Yes, Your Honor.

THE COURT: That's up to you. You can do it in
person if you want. Because these are going to be,
well, the 30(b)(6) is your witness, so you can obviously
bring them here. What about Sater's ex-wife, is she
here in New York?

MR. SNYDER: She's in New York. She's quite

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2 sick and has not been in a physical condition where she
3 can testify.

4 THE COURT: Well, could she do - do you want to
5 think about contention interrogatories instead, would
6 that be easier for her to accommodate her illness?

7 MR. SNYDER: Well, that would be much easier if
8 they were amenable to that.

9 MR. WENNER: Your Honor, I'm not sure that we
10 are. We've offered to do short sittings of the
11 deposition remotely at her convenience --

12 THE COURT: What's - what information does she
13 have that's so important?

14 MR. WENNER: So part of what occurred in
15 several of these deals is that Mr. Sater used associates
16 in other companies and attorney escrow accounts and his
17 ex-wife, her companies, to receive funds, move funds
18 through those companies and conceal payments back to
19 himself as part of the concealment and his handling of
20 the proceeds of the sales, and it's his means of
21 personally profiting from the deals. She has evidence
22 about the TriCounty Mall proceeds where she received
23 approximately I believe \$20 million that were used to
24 pay off a Triadu subsidiary in a settlement. And that
25 concealment of that payment and the movement of funds

1 through her account is what we'll be deposing her about.

2 And I'm concerned about doing contention
3 interrogatories, Your Honor, frankly, because Mr. Sater
4 is in direct communication with her about her testimony,
5 and, for example, Mr. Snyder produced to us at our
6 request text messages between Mr. Sater and Ms. Gutsko
7 about her deposition and about plaintiff's conduct and
8 his allegations against us. I'm concerned that the
9 contention interrogatories will be not just her
10 statements but her statements with Mr. Sater's input.

11 THE COURT: All right, but the bank records are
12 showing these funds going in and out. Is there anybody
13 else who can testify? I mean how critical is her
14 testimony because if you have certified bank records
15 showing this flow of funds, you know, what else is -
16 what she knew is sort of less important than what Sater
17 knew and was doing, right?

18 MR. WENNER: Well, the transactions lack
19 economic substance, and that's the testimony that we
20 want to elicit. These are transfers of funds, they're
21 not transactions or loans among companies. It
22 establishes that he's not actually using these
23 corporations in the proper corporate form. He's using
24 them to conceal the movement of funds. So the questions
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2 to her about what was the granola business interest in
3 this money, what was the basis for you receiving it,
4 this is a small company, I'm not aware of anyone else
5 who would know this information about it. So it can be
6 a very targeted deposition. That's why we've been,
7 that's why we're willing to make it very short. It's
8 about this transaction.

9 THE COURT: Okay.

10 MR. WENNER: And about what she understood the
11 purpose of it was.

12 THE COURT: Is she in the hospital?

13 MR. SNYDER: She's been in and out of the
14 hospital. I really don't want to go into detail about
15 her condition, but suffice it to say it's quite serious
16 and requires her to take medicine that makes her not a
17 good witness.

18 THE COURT: Well, she may just become available
19 because of this medical, these medical issues. So --

20 MR. SNYDER: I hear that's possible.

21 THE COURT: This is, this, you know, plaintiffs
22 are going to have to think about what, how they want to
23 deal with this. Maybe it's a request to admit. Maybe
24 it's something simple in light of her medical status.
25 Right? Because --

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MR. SNYDER: And I'm happy to meet and confer and, you know, you can, if we can figure out the core of what you really need is, I'm happy to help.

MR. WENNER: Your Honor, we'll take that under advisement, and certainly I have no interest in putting someone at risk or pressing them for no reason, but Mr. Sater's credibility will be a central issue, and I believe --

THE COURT: Sure.

MR. WENNER: -- it's incumbent upon me to find that evidence that impeaches his credibility and shows -

THE COURT: But he's transferring money to the granola company.

MR. WENNER: That's right, Your Honor.

THE COURT: Do you have all the records of the granola company, the bank records of the granola company?

MR. WENNER: Not from - the bank records that we received both from banks and from Ms. Gutsko don't go back, they stop right - as far back in time as we can go, we don't get that transaction.

THE COURT: I see.

MR. WENNER: So it's - I believe it's proper

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2 for me to push to get this, and I understand the
3 difficulty that she faces, and I'm not - that's why I
4 haven't moved to compel, so I'm not trying to make it
5 difficult for her, but I do believe it's something that
6 we should be entitled to.

7 THE COURT: All right.

8 MR. WENNER: But we will certainly think hard
9 about alternative ways.

10 THE COURT: I mean she could be deposed from
11 her home, for example, remotely so that you don't have
12 to go into her home if there's, you know, issues about
13 COVID, etc. That's something you could think about.

14 MR. WENNER: And that's what we have offered to
15 do, one hour remote in her home.

16 THE COURT: Yeah, like maybe one hour. It's
17 not too much time. It actually may be less taxing just
18 to answer some questions as opposed to dealing with
19 drafts of answers to written requests. Sometimes that's
20 more of a slog than actual just talking for an hour.

21 MR. SNYDER: I've been leaving her alone, but I
22 will, Your Honor, I will get back in touch with her and
23 get an update on her condition, and if we can do the
24 one-hour bursts and keep it as narrow as we can, maybe
25 that's the easiest way. I'll find out.

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2 THE COURT: Okay. All right, so I'd like to
3 schedule another case management conference for the
4 beginning of October.

5 (pause in proceeding)

6 MR. SNYDER: So, Judge, I have - oh.

7 THE COURT: I'm just looking at the calendar.

8 (pause in proceeding)

9 THE COURT: It's weird.

10 (pause in proceeding)

11 THE COURT: Yeah, we can do that. 2 o'clock on
12 October 17. It is Shemini Atzeret. I don't know if
13 that's a problem for anybody here.

14 MR. SNYDER: If Jason, I'm not sure about Jason
15 from MeM Energy who's not here today.

16 THE COURT: If it's a problem, you can write to
17 me. I'm going to schedule it for now. Okay?

18 MR. SNYDER: October 17 you said?

19 THE COURT: At 2 p.m. I want you all to be
20 wrapping discovery dealing with any remaining issues so
21 that you can close out all discovery by the end of the
22 October.

23 MR. WENNER: Understood, Your Honor. The one
24 caveat I would ask that we make is the Swiss depositions
25 where the Swiss court has entertained objections from

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1 the witnesses. And there was correspondence back and
2 forth between the Geneva court and Judge Koeltl, and
3 most recently the Geneva court disclosed to us
4 Khrapunov's objection which then asked for a response to
5 that which we'll be providing. We had originally asked
6 for that months ago, but the court, the Geneva court
7 denied our request waiting for us to see how Judge
8 Koeltl would respond. So we are moving that along, but
9 we're at the whim of that court.
10

11 THE COURT: Yeah, I mean we can --

12 MR. WENNER: That should be the only remaining
13 issue that is left outstanding --

14 THE COURT: Right, prior to trial.

15 MR. WENNER: Yes.

16 THE COURT: Right, okay. So Judge Koeltl will
17 ultimately be presiding over any trial in the matter, so
18 he can, you know, adjust the timing to that. I don't
19 see a problem in allowing you to get that evidence once
20 it's obtained and utilize it. So I won't cut off that
21 process.

22 MR. WENNER: Thank you, Your Honor.

23 THE COURT: Okay. Anything further from
24 defense counsel?

25 MR. SNYDER: So, Your Honor, just to summarize,

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September 15 we have to produce or provide the privilege logs for the Herz --

THE COURT: Or you can just produce those documents that you don't - obviously you don't have to log anything that you think (indiscernible) you have no objection to producing.

MR. SNYDER: Of course. And produce the supplemental interrogatory responses the 30th. So we have two outstanding depositions. We've got the 30(b)(6) --

THE COURT: And I want BTA to produce its witness in the last two weeks of September.

MR. SNYDER: Okay, and also Kenes Rakishev, we also noticed his deposition. That would be those times as well.

THE COURT: Yes, I'd like you to get his deposition.

MR. WENNER: Your Honor, on Mr. Rakishev, this has been the subject of a meet and confer with Mr. Snyder. Our understanding, where we left that, was that he was going to determine whether he still needed that deposition after deposing our witnesses. And he can correct me if I'm wrong obviously. But we were prepared to move for a protective order on his deposition based

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on the overbreadth of what we understood would be the topics about which he'd be asked.

THE COURT: He's a fact witness, right?

MR. SNYDER: Yes.

MR. WENNER: I don't understand how, but he is, he would be appearing in his personal capacity, Your Honor, yes.

THE COURT: Okay, so, Mr. Snyder, what kind of information does he have personal knowledge of?

MR. SNYDER: He was personally involved in the asset recovery effort.

THE COURT: But this case concerns specific deals that Mr. Sater was involved in, real estate transactions, right? That's what this case concerns. So you're entitled to discovery that's relevant to the claims and defenses in this case --

MR. SNYDER: Yes.

THE COURT: So how, what information do you believe he has that goes to the elements of claims or defenses in this action?

MR. SNYDER: A whole range of things, Your Honor, including the entire asset recovery effort that this --

THE COURT: Again, entire asset recovery effort

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2 is really not, that's not going to a claim or defense.

3 MR. SNYDER: Well --

4 THE COURT: What does he have knowledge about
5 going to the transactions at issue and the defense of
6 the transactions at issue?

7 MR. SNYDER: Well, Your Honor, he testified I
8 think in 2017 as to his knowledge up to that point. He
9 has not testified after that. And so there's no
10 testimony from him --

11 THE COURT: But these transactions happened
12 before 2017.

13 MR. SNYDER: Well, the transactions occurred,
14 yes, but then the asset, then the recovery effort --

15 THE COURT: Again, the asset recovery --

16 MR. SNYDER: -- postdated that.

17 THE COURT: -- is not relevant to the
18 underlying transactions. What the plaintiffs are trying
19 to ascertain and to demonstrate is that money that came
20 from BTA Bank was funneled through various shell
21 companies and used in real estate transactions that Mr.
22 Sater was involved in and that Mr. Sater knew it and was
23 helping to launder the funds --

24 MR. SNYDER: Yes.

25 THE COURT: -- and received some of, and, in

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2 fact, received some of the funds as di some of the other
3 defendants. That's what they're trying to prove. So I
4 haven't yet heard that the asset, the broader asset
5 recovery is neither here nor there to this claim. He
6 needs to have information that's relevant to these
7 particular transactions or money that came from BTA Bank
8 and why that money, why he thinks that money is the same
9 money that was used in these real estate transactions,
10 that's the only area of relevant testimony that I can
11 think of.

12 MR. SNYDER: Well, and obviously, Your Honor,
13 we'll see because we're going to take the 30(b)(6) of
14 them, and what I did say to Mr. Wenner, I said, I didn't
15 say that I thought that it would make Rakishev
16 unnecessary. I said I'm happy to do that first, and to
17 the extent that we can have issues, answer questions,
18 answer, you know, and not have to have Mr. Rakishev
19 testify, then I'm all for that. I'm all for
20 streamlining the deposition. And as a matter of fact,
21 the 30(b)(6) is going to, you know, sort of shape what
22 we will ask Mr. Rakishev.

23 THE COURT: Right. But the broader assert
24 recovery is really way beyond the scope of what's
25 proportional and necessary in this case. The fact

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2 inquiry needs to be on where the funds came from, what
3 is the basis for these funds alleging to be any part of
4 what Sater was doing. That's really the key, you know -
5 -

6 MR. SNYDER: Well, don't forget, Your Honor, we
7 do have defenses. We have the defense of the
8 confidential assistance agreement --

9 THE COURT: Sure.

10 MR. SNYDER: -- that that was a release. We
11 have defenses of unclean hands --

12 THE COURT: Yeah, you can ask about that, sure.

13 MR. SNYDER: -- and those all, those involve
14 facts not in 2011. Those involve facts in 2017, 2018,
15 2019. And really those would be among the things that
16 we would be asking Mr. Rakishev. Not so much the nuts
17 and bolts of this wire sent in 2011, what was that for.
18 More the affirmative defenses or just plain defenses.

19 THE COURT: Well, sure, you're entitled to
20 discovery on your defenses, that's of course. So if
21 there's questions relevant to those defenses, you are
22 entitled to explore those. Okay, so I'll ask you to
23 meet and confer about that. If you're going to move for
24 a protective order, then that motion needs to be filed
25 by September 15. So you should meet and confer what the

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scope of that, his testimony is going to be.

MR. WENNER: Thank you, Your Honor.

THE COURT: So any motion for a protective order, September 15; any response by September 30. No reply. Okay. Other items, Mr. Snyder?

MR. SNYDER: I don't think so.

THE COURT: Okay. Any other items for plaintiff?

MR. WENNER: No, Your Honor, thank you.

THE COURT: Okay, good to see everybody. We're adjourned.

MR. SNYDER: Oh, just last question.

THE COURT: Yes.

MR. SNYDER: And this is not to put anybody on the spot, but I do have to ask the question, my client asked me to ask the question. Relating to the security of sealed filings, a lot of documents or a number of documents in this case have been filed under seal. In January 2021 it was reported that there was a breach of the ECF system probably by Russians. And then about three weeks ago there was testimony in Congress about a second separate breach of the same system. And so as a lawyer in this case if I think that a sealed filing isn't safe, I'm going to be behalf differently than if

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2 it is.

3 So is there anything, any news or update on the
4 security of sealed ECF files?

5 THE COURT: Well, my understanding is that this
6 particular court has not been impacted --

7 MR. SNYDER: Good.

8 THE COURT: -- in the same way that other
9 courts may have been impacted.

10 MR. SNYDER: All right.

11 THE COURT: So the Southern District of New
12 York takes security pretty seriously. As you know, we
13 don't have WiFi in this building even. So my
14 understanding is that district may not have been
15 affected in the same way, but, again, I don't have
16 personal knowledge of that, of everything, but I have no
17 reason to believe, I've received no information that
18 would lead me to believe that any sealed documents in
19 this case were hacked, if you will. Now, I may not, you
20 know, I don't know what I don't know, but I've received
21 nothing to indicate that they were, the sealed documents
22 in this case were compromised.

23 MR. SNYDER: And I did not mean to put you on
24 the spot.

25 THE COURT: That's okay.

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MR. SNYDER: My client wanted me to ask the question.

THE COURT: Yeah, I have received nothing. But, you know, of course, any documents that get into court they're filed by people, and so any leaks could be attributed to things having nothing to do with ECF. So I just want to be clear about that. Because the court system is one thing, but we only have things because people have them. We can control only, you know, here, but we can't control people who otherwise have access to the documents. Okay?

MR. SNYDER: Many potential points of failure, yes.

THE COURT: Right. Okay.

MR. SNYDER: Thank you for that, Your Honor.

THE COURT: Okay. We're adjourned.

(Whereupon the matter is adjourned to October 17, 2022 at 2 p.m.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of City of Almaty, Kazakhstan, et al. v. Sater, et al., Docket #19cv02645, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: March 2, 2023